

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FILED
CLERK'S OFFICE
2005 JAN 25 A 10:11
U.S. DISTRICT COURT
DISTRICT OF MASS.

FALKEN INDUSTRIES, LTD.
and
ROY JANIS
Plaintiffs

v.

Civil Action No. 04-12479 MEL

CHRISTIAN JOHANSEN
and
PATRICK SAUTIN
Defendants

**PLAINTIFFS' MOTION FOR LEAVE OF COURT TO FILE A REPLY MOTION IN
SUPPORT OF THEIR MOTION TO REMAND ON AN ISSUE OF FIRST IMPRESSION**

Now come the Plaintiffs, Falken Industries, LTD. (hereinafter "Falken") and Roy Janis, and respectfully request this honorable Court to allow the Plaintiffs to file a reply motion in support of their motion to remand the within matter back to the Essex County Superior Court (hereinafter "the State Court"). In support thereof, the Plaintiffs state the following through counsel.

Facts

The Plaintiffs filed their Complaint in the State Court for an action based on multiple breaches of contract, breaches of fiduciary duties, fraud, etc. The Defendants filed a Notice of Removal asserting diversity jurisdiction pursuant to 28 U.S.C. §1332. The Plaintiffs timely filed their Request for Remand. The Defendants followed with their Opposition to the Motion to Remand shortly thereafter and asserted new facts and new arguments not previously stated in their Notice of Removal. The Plaintiffs are now seeking permission of this Honorable Court to file a Reply in support of their Motion to Remand in order to clarify the outstanding legal issues being presented before this honorable Court.

Argument

The crux of the Plaintiffs' argument relating to remand to the Essex Superior Court is that the Defendant, Sautin is a dual United States and French citizen who destroys complete diversity. The Plaintiffs assert that the Defendant, Sautin is a stateless United States citizen who is not domiciled in the United States. Accordingly, he destroys complete diversity as per the United States Supreme Court. The issue of dual citizenship, however, appears to be a case of first impression in the District of Massachusetts as well as the First Circuit (other than, arguably, one case out of the District Court for the District of Puerto Rico).

The Plaintiffs are requesting that they be allowed to address the issues raised by the Defendants in their Opposition to the Plaintiffs' Motion for Remand. The attached Reply will not prejudice the arguments asserted by the Defendants as the Plaintiffs are merely responding to the allegations and arguments raised by the Defendants in their Opposition to the Motion for Remand. The Plaintiffs feel that a reply is necessary as the Defendants have raised additional facts and legal arguments that were not previously raised in their Notice of Removal which require a response.

The Plaintiffs assert that they have meritorious arguments which will be required for this honorable Court to be heard. It appears that the Defendants have switched their legal arguments for their claim to invoke diversity jurisdiction. It appears that Mr. Sautin is now, in fact, a dual citizen. (Defendant's Opposition to Plaintiff's Motion for Remand, p.2.). This fact was conveniently ignored in their Notice of Removal and was only brought forth when confronted with evidence indicating such in the Motion for Remand. The Defendants have now appeared to switch gears and now argue another theory of law in order to obtain diversity jurisdiction of this honorable Court. Accordingly, the Plaintiffs are seeking leave of Court to file a Reply in Support of its Motion for Remand.

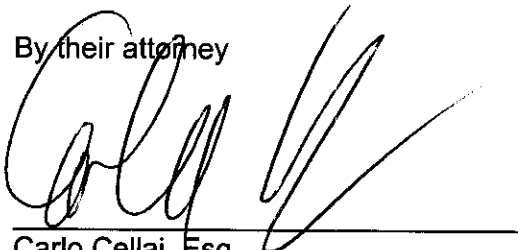
Conclusion

The Plaintiffs should be allowed leave of Court to file a Reply in Support of its Motion for Remand as the Defendants have asserted additional facts and new legal theories in order to support their claim of diversity jurisdiction. Accordingly, the Plaintiffs should be allowed an opportunity to respond to the new allegations and new arguments asserted therein for the above stated reasons.

WHEREFORE, the Plaintiffs respectfully request this honorable Court for leave of court to file a Reply in Support of the Motion for Remand for the above stated reasons.

The Plaintiffs
FALKEN INDUSTRIES, LTD.
and
ROY JANIS

By their attorney

A handwritten signature in black ink, appearing to read 'Carlo Cellai', is written over a horizontal line.

Carlo Cellai, Esq.
CELLAI & DENAUW, LLP
76 Canal Street, Suite 402
Boston, MA 02114
(617) 367-2199
BBO No. 558651